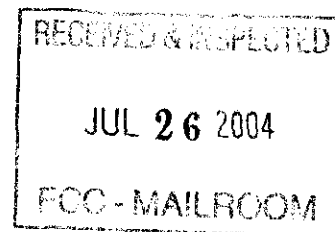


July 19, 2004

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th St. S.W.
Washington DC 20554



Re: MM Docket 86-440, and application and amendment BMPCT-20031219AAK

Dear Ms. Dortch:

I, Sid Shumate, owner of a residence located at 432 Moseley Drive, in Charlottesville, Virginia, and owner of the Givens & Bell division of Blue Ridge Video Services, hereby submit the enclosed Application for Review of the May 28, 2004 grant of a transfer of control, file # BAPCT-20040316AJT, of the construction permit, as modified, for WCAV, Charlottesville, VA.

I certify that I am mailing or hand-carrying true copies to the following interested parties:

Mr. Gene A. Bechtel, Esq.
Law Office of Gene Bechtel, P.C., Suite 600
1050 Seventeenth St., NW
Washington DC 20036

Margot Polivy, Esq.
Charlottesville Broadcasting Corp.
1532 16th Street, NW
Washington, DC 20036

Ms. Katrina Renouf, Esq.
Renouf and Polivy
432 Sixteenth St., N.W.
Washington DC 20036

Vincent A. Pepper, Esq.
Womble Carlyle Sandridge & Rice
1401 Eye Street, NW, 7th Floor
Washington DC 20005

Robert F. Cleveland
Office of Engineering and Technology
Federal Communications Commission
445 12th St. SW
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Meredith Senter, Esq.
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2000 K. St. NW
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Joseph Di Scipio
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1920 N. St. NW
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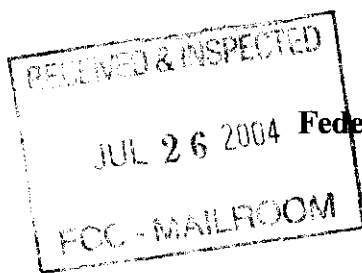
Robert A. Beizer, Esq.
Gray Television Licensee, Inc.
Suite 1200
1750 K. Street, NW
Washington DC 20006

A handwritten signature in cursive script, reading "Sidney E. Shumate".

Sidney E. Shumate
Principal Owner, Givens & Bell Division of Blue Ridge Video Services
1897 Ridge Road, Haymarket VA 20169

No. of Copies rec'd
List ABCDE

Handwritten initials "CTG" in a stylized, bold script.



Before the

**Federal Communications Commission
Washington, D.C. 20554**

In re Applications and Amendments of)	MM DOCKET NO. 86-440
)	
Charlottesville Broadcasting Corporation)	File No. BMPCT-20031219AAK
)	
For Modification of Construction Permit)	File No. BMPCT-20030407AAM
For A New TV Station on Channel 19)	
At Charlottesville, Virginia)	File No. BPCT-19860410KP
)	
)	File No. BPCT-19961023KF

Reply to Opposition to Applications for Review

July 19, 2004

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Re: MM Docket 86-440, and application and amendment BMPCT-20031219AAK, et al;

Dear Ms. Dortch:

The following is being filed with the Federal Communications Commission (the Commission) as a "Reply to Opposition to Applications for Review". I submit this application to address matters raised in the "Opposition to Applications for Review"

(Opposition) filed by Meredith S. Senter, Esq., of Leventhal, Senter, & Lerman, PLLC, on July 9, 2004, on behalf of Charlottesville Broadcasting Corp. (CBC), and Gray Television Licensee, Inc. (Gray).

I. CBC asserts that Mr. Shumate lacks standing to challenge the decision.

In the Opposition, CBC partially quotes 47 C.F.R. § 1.115(a), and claims that Mr. Shumate has not met the test required in 47 C.F.R. § 1.115(a) to show an actual or threatened injury as a direct result of the challenged action, in order to establish standing. However, a more complete reading of 47 C.F.R. § 1.115(a) shows that this test applies only to “Any person filing an application for review who has not previously participated in the proceeding”.

“Mr. Shumate” has, most vigorously, previously participated in this proceeding, most recently having submitted, on January 19, 2004, on behalf of himself and Givens & Bell, of which he is the principal, and prior to the current applications for review, an informal protest to the grant of the “Application for Modification of Construction Permit” (New Application) filed by CBC, BMPCT-20031219AAK, and had subsequently replied to the “CBC Response to Informal Objection of Sidney E. Shumate” on February 12, 2004.

With regard to the application for transfer of control, "Mr. Shumate" has previously participated in this proceeding, most recently having submitted, on April 7, 2004, on behalf of himself and Givens & Bell, of which he is the principal, and prior to the current applications for review, an informal protest to the grant of transfer of control, file # BAPCT-20040316AJT, of the construction permit and current construction permit modification applications, and also submitting on April 9, an update to the information in the aforementioned protest.

"Mr. Shumate's" involvement in this proceeding, in fact, has included several submissions to the Commission, having started with a "Application for Construction Permit", File No. BPCT-19961023KF, in 1996, submitted by Givens & Bell, Inc., (G&B) a corporation of which Mr. Shumate was the principal. At the time, the applications of the principals of the predecessors of CBC, namely, Achenar Broadcasting, Company (Achenar) and Lindsay Television, Inc. (Lindsay), had been dismissed by the Commission, and all allowable appeals before the Commission had run their course. Achenar and Lindsay had proceeded to bring suit before the U. S. Court of Appeals for the District of Columbia Circuit (the Court). The application of G&B, in anticipation of justification by the Court of the dismissal of the applications of Lindsay and Achenar, was accepted for processing by the Commission, and after having been returned for a minor correction, was assigned a file number.

The Court, instead of justifying the decision of the Commission, granted a decision in favor of Achenar and Lindsay; as a result, the Commission reluctantly accepted a

settlement agreement between Achenar and Lindsay, and granted, (without reversing its past judgment that neither applicant was qualified), a Ch. 19 construction permit to the joint entity created by the joining of Achenar and Lindsay, i.e., CBC.¹ This required the dismissal of the G&B application².

The failure of CBC, however, to build, in a timely manner, the construction permit granted to them by the Commission on August 15, 2001, resulting in the expiration of the construction permit on August 15, 2004, would render moot the cause of action which forced the dismissal of the G&B application. The expiration of the CBC/Gray permit, untolled, would then allow G&B to apply for reinstatement of its application for construction permit. Therefore, the grant by the Commission of a transfer of control of the CBC construction permit to Gray, and the grant of the now-faulty construction permit modification, negates the ability of G&B to apply for reinstatement of its application. The Commission still holds G&B's construction permit application fee; therefore, there is a direct financial loss that will occur to G&B, and to Mr. Shumate, if the CBC construction permit does not expire, untolled, on August 15, 2004. These facts have been previously established before, and recognized by, the Commission³. Therefore, CBC's claim that Mr. Shumate has no stake in this matter, is not valid, and ignores the record in proceeding #86-440.

¹ Memorandum Opinion & Order (MO&O), FCC # 00-149, Adopted 4/19/2000

² Order, FCC #01.45, Adopted Feb. 8, 2001

³ As summarized by the Commission in Order, FCC#00-382, Adopted 10/23/00, and in Order, FCC #01.45, Adopted Feb. 8, 2001, both from Proceeding 86-440.

Mr. Shumate, as principal of Givens & Bell, restates his claim⁴ regarding the G&B application; it continues to be “the first application to present a workable technical solution in this proceeding”, and therefore claims to be the first, and still the only, qualified and experienced⁵ applicant for Ch. 19 in Charlottesville, Virginia.

II. CBC claims that Mr. Shumate improperly raises issues regarding compliance with RF exposure guidelines that were not raised before the Media Bureau.

The application for review of the grant of the construction permit explains in full why the premature grant of the modification of construction permit on May 29, 2004, one day after the grant of the WVIR-DT modification of construction permit, prevented the specific issue regarding the exceeding of occupational RF levels on the new WVIR-DT tower, from being raised before the Media Bureau. We, in the application for review, protest the fact that the premature grant prevented such consideration. The record bears out that I have been constantly and diligently raising the issue, before the Commission, of RF exposure problems that would be created by the various modification of construction permit applications that have been proposed by CBC over the past year. I do note that 30 days have passed since the modification of construction permit for WVIR-DT was granted, and CBC, or Gray, has not submitted to the Commission, as required within 30

⁴ Previously stated in the Opposition to, Protest of, and Petitions of the Givens & Bell Division of Blue Ridge Video Services, submitted May 25, 2000, in re Proceeding #86-440.

⁵ Mr. Shumate, as the principal of the WVGTV-TV Corporation, was the founder, starting with the petition for allotment application, promoter, builder, and owner-manager of what is now WVNS-TV. Neither CBC nor Gray has any prior experience in building a new television station from the ground up.

days by 47 CFR §1.65, an update to its application, still required by 47 CFR §1.65 despite the subsequent grant of the application, taking into account the relocation of the WVIR-DT antenna.

It is WCAV's signal that will threaten the tower workers on the WVIR-DT tower, and therefore of concern. WVIR-DT's signal will not exceed the exposure limits at any point on the WCAV tower. Neither the commitment of both WCAV and WVIR-DT to adopt measures to protect people working on the towers, nor any of the other arguments put forth by CBC in the Opposition, negates the regulatory necessity for WCAV to comply with the requirements of 47 CFR §1.1307(b) to prepare an Environmental Assessment, "if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits".

I also personally inspected, from the nearby right-of-way, on June 30th, 2004, and noted, for the record, the rapidly proceeding construction at the WCAV transmitter site. This construction may be found by the Commission, upon completion of this review, to be in violation of 47 CFR §1.1312(b). I also note that the WVIR-DT tower had also been rapidly erected during late June, and the DTV antenna and part of the transmission line, as of July 3, 2004, had already been installed.

III. CBC claims that the June 24 Application (for review of the grant of transfer of control) is silly, and that Mr. Shumate's clear purpose is to interpose delay.

On the contrary; as shown in part I, above, it is in the best interest of Mr. Shumate, and of G&B, that no delay occur, in that such delay would provide opportunity for tolling of the construction period, and delay the time when G&B can petition for reinstatement of its application. Surely, had any such even occurred, CBC would have immediately submitted a notice of such event to the Commission; the lack of any such notice speaks for itself. As an applicant for Ch. 19, whose appeals before the Commission were exhausted in 2000, G&B has, in fact, deferred proceeding to the D. C. Circuit Court, in order not to provide an excuse for tolling the construction period. G&B had eagerly anticipated that the Commission, as it did in the WIJR decision⁶, would use its regulatory powers and bureaucratic methods to produce the same result for the CBC application, forcing CBC to either build Ch. 19 itself, or face expiration of its permit.

The major source of delay in this matter has, in fact, been CBC itself. Despite the grant of the right to a construction permit, by MO&O dated April 19, 2000, it was not until over a year later, on August 15, 2001, that a flawed application for construction permit was granted and the construction period time clock started. For the first two years of the construction period, rather than build the station, CBC shopped the construction permit around, attempting to negotiate the highest possible price for its sale, unbuilt, to someone who would actually construct the station. After an abortive attempt to move the location

⁶ As documented and explained in MO&O, FCC 03-14, adopted January 29, 2003.

of the construction permit 30 miles to the east, and turn the construction permit into a move-in application in the Richmond television market, CBC then settled on selling the construction permit to Gray at the "last minute".

The record is now clear and unquestionable. The intentions of "Mr. Shumate" and G&B are clear, and a matter of record, both of claim, and of performance in the construction of what is now WVNS-TV. G&B fully intends to build Ch. 19, if and when finally given the opportunity by the Commission.

CBC, by comparison, has long put forth that it would build the station if given the opportunity, only to turn, once it had the permit in hand, and offer the unbuilt construction permit in a for-profit, last minute sale to the highest bidder, in blatant violation of Commission policy⁷. The principal of CBC, a communications lawyer operating on her own time, despite being found five times to be either less qualified, or unqualified, to hold this permit, has fought for 18 years before the FCC and through the Courts, utilizing an 18 year-long string of abusive pleadings, to obtain control of this construction permit so that she might sell it, as she now has, unbuilt, for a profit. In doing so, she convinced the Commission, in 1991, to rescind the existing construction permit that had been granted to Lindsay, utilizing an argument regarding interference to the NRAO that she quickly abandoned and later used against the Commission in Court,

⁷ "Implicit in the filing of a construction permit application is the intent to construct the station and commence service." E. g. , Assignment and Transfer of Construction permits, 16 FCC 2d 789 (1969), as quoted in FCC 94-284, MO&O, Adopted November 4, 1994.

when it served her purpose⁸. By these means, Ms. Polivy has, therefore, herself, delayed the introduction of a second commercial television service to Charlottesville by at least eighteen years, in order to capture and sell the construction permit, unbuilt, for a profit. Therefore, for Ms. Polivy, as CBC, to make any claims against any other individual or entity, stating that they are attempting to create delay in this matter for their own purposes by abusing the Commission's process, is hypocritical in the extreme. CBC deserves no better, and in fact worse, treatment than that accorded to the principals in the WIJR decision⁹.

"In the Public Interest"

The statements in the Opposition, including "The Bureau's prompt action on the assignment application plainly served the public interest" strongly imply that bringing a new full power commercial television service to Charlottesville, Virginia is, in and of itself, clearly in the public interest. The public record, and that of the Commission's decisions, does not bear this out. In the entire, 20-year history of this proceeding¹⁰, the Commission has not received even a single letter, nor a single e-mail comment, from the general public, demanding, or even showing support, for a new full power commercial television service in Charlottesville, VA. All support for such a new service has come from those, including myself, who have applied to build this facility. The only time the

⁸ See *Achenar Broadcasting Company v. FCC*, 15 FCC Rcd 7808, 7816 (1995), and Informal Objection to Grant of BMPCT-20030407AAM, submitted May 9, 2003, in Proceeding 86-440.

⁹ See *Birach Broadcasting Corporation*, 18 FCC Rcd 1414 (2003).

¹⁰ The first competing applications for Ch. 64 in Charlottesville, by Evangel Communications and Christopher Gault, were submitted in 1984.

general public has commented, was when it was made public knowledge that the Commission would be forcing the Ch. 19 translator carrying PBS programming from WVPT off Ch. 19, and perhaps off the air, to make room for a full power commercial service. That public response was only in support of the translator and its existing programming. The Commission itself has twice, in 1990 and 1991¹¹, found that it was in the public interest that both Lindsay and Achenar, the two remaining applicants, should be denied a grant of a construction permit, and that the field should be opened to new applicants. Therefore, anyone now claiming that the grant of any application for a new full-power television service in Charlottesville, Virginia, is "in the public interest", must now meet a high standard in explaining how they justify such a conclusion.

Conclusion

The Commission must explain the significant change in policy represented by its concurrent grant of the transfer of control and construction permit modifications for WCAV. This action will have a "Pandora's Box" effect far beyond this single station.

This action, as it stands, sends a clear signal to those who would traffick in unbuilt construction permits; a message that they can speculate in allotment auctions, secure in the knowledge that they will have up to 2-1/2 years to pitch the unbuilt construction permits, a scarce and valuable resource, to the highest bidder.

¹¹ MO&O adopted by the Commission 9/10/91, FCC 91-280

The upcoming FM allotment auctions in November, 2004 can be expected to be the first significant test of the new policy established by this action. After the auction, the viable FM allotments will be an even more scarce and valuable resource, easily sold at a profit. And the same may prove true for all future allotment auction sales of broadcast properties.

Sincerely yours,

A handwritten signature in cursive script, reading "Sidney E. Shumate". The signature is written in dark ink and is positioned above a horizontal line.

Sidney E. Shumate